

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1042

AN ACT

AMENDING SECTION 28-673, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 1; AMENDING SECTION 28-1321, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 3; AMENDING SECTIONS 28-1381 AND 28-1385, ARIZONA REVISED STATUTES; AMENDING SECTION 28-1383, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 307, SECTION 6; REPEALING SECTION 28-1383, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 4; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-673, Arizona Revised Statutes, as amended by
3 Laws 2005, chapter 312, section 1, is amended to read:

4 28-673. Traffic accidents; implied consent; tests

5 A. A person who operates a motor vehicle within this state gives
6 consent to a test or tests of the person's blood, breath, urine or other
7 bodily substance for the purposes of determining alcohol concentration or
8 drug content if the person is involved in a traffic accident resulting in
9 death or serious physical injury as defined in section 13-105 and a law
10 enforcement officer has probable cause to believe that the person caused the
11 accident or the person is issued a citation for a violation of any provision
12 of this article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of
13 this title.

14 B. The test or tests chosen by the law enforcement agency shall be
15 administered at the direction of a law enforcement officer who has reasonable
16 grounds to believe that the person was involved in a traffic accident
17 resulting in death or serious physical injury as defined in section 13-105
18 and who has probable cause to believe that the person caused the accident or
19 the person was issued a citation for a violation of any provision of this
20 article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of this
21 title.

22 C. After a determination is made that a person was involved in a
23 traffic accident resulting in death or serious physical injury as defined in
24 section 13-105 and the officer has probable cause to believe that the person
25 caused the accident or the person was issued a citation for a violation of
26 any provision of this article, article 2, 3 or 5 through 15 of this chapter
27 or chapter 4 of this title, the person may be requested to submit to and
28 successfully complete any test or tests prescribed by subsection A of this
29 section, and if the person refuses, the person shall be informed that the
30 person's license or permit to drive will be suspended or denied for twelve
31 months, or for two years for a second or subsequent refusal in a period of
32 sixty months, unless the person expressly agrees to submit to and
33 successfully completes the test or tests. A failure to expressly agree to
34 the test or successfully complete the test is deemed a refusal. The person
35 shall also be informed that ~~if the test results show a blood or breath~~
36 ~~alcohol concentration of 0.08 or more, or if the results show a blood or~~
37 ~~breath alcohol concentration of 0.04 or more and the person was driving or in~~
38 ~~actual physical control of a commercial motor vehicle,~~ the person's license
39 or permit to drive will be suspended or denied for not less than ninety
40 consecutive days IF THE TEST RESULTS SHOW A BLOOD OR BREATH ALCOHOL
41 CONCENTRATION AS FOLLOWS:

42 1. 0.08 OR MORE.

43 2. 0.04 OR MORE IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL
44 CONTROL OF A COMMERCIAL MOTOR VEHICLE.

1 3. 0.05 OR MORE IF WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS
2 CONVICTED OF A VIOLATION OF SECTION 28-1383 OR AN ACT IN ANOTHER JURISDICTION
3 THAT IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1383.

4 D. If a person refuses to submit to the test designated by the law
5 enforcement agency as provided in subsection B of this section:

6 1. The test shall not be given, except as provided in section 28-1388,
7 subsection E or pursuant to a search warrant.

8 2. The law enforcement officer directing the administration of the
9 test shall:

10 (a) File a certified report of the refusal with the department.

11 (b) On behalf of the department, serve an order of suspension on the
12 person that is effective fifteen days after the date the order is served.

13 (c) Require the immediate surrender of any license or permit to drive
14 that is issued by this state and that is in the possession or control of the
15 person.

16 (d) If the license or permit is not surrendered, state the reason why
17 it is not surrendered.

18 (e) If a valid license or permit is surrendered, issue a temporary
19 driving permit that is valid for fifteen days.

20 (f) Forward the certified report of refusal, a copy of the completed
21 notice of suspension, a copy of any completed temporary permit and any driver
22 license or permit taken into possession under this section to the department
23 within five days after the issuance of the notice of suspension.

24 E. Section 28-1321, subsections E through P apply to any test
25 prescribed by this section and to any person who refuses to submit to a test
26 prescribed by this section, except that:

27 1. The certified report shall state the law enforcement officer's
28 reasonable grounds to believe that the person was involved in a traffic
29 accident resulting in death or serious physical injury as defined in section
30 13-105 and the law enforcement officer's probable cause to believe that the
31 person caused the accident or the person was issued a citation for a
32 violation of any provision of this article, article 2, 3 or 5 through 15 of
33 this chapter or chapter 4 of this title.

34 2. The certified report shall be filed pursuant to subsection D of
35 this section.

36 3. The scope of the hearing shall include the law enforcement
37 officer's probable cause to believe that the person was involved in a traffic
38 accident resulting in death or serious physical injury as defined in section
39 13-105 and the law enforcement officer's probable cause to believe that the
40 person caused the accident or the person was issued a citation for a
41 violation of any provision of this article, article 2, 3 or 5 through 15 of
42 this chapter or chapter 4 of this title.

43 F. A person who is dead, unconscious or otherwise in a condition
44 rendering the person incapable of refusal is deemed not to have withdrawn the

1 consent provided by subsection A of this section and the test or tests shall
2 be administered.

3 Sec. 2. Section 28-1321, Arizona Revised Statutes, as amended by Laws
4 2005, chapter 312, section 3, is amended to read:

5 28-1321. Implied consent; tests; refusal to submit to test;
6 order of suspension; hearing; review; temporary
7 permit; notification of suspension; special ignition
8 interlock restricted driver license

9 A. A person who operates a motor vehicle in this state gives consent,
10 subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or
11 28-1383, to a test or tests of the person's blood, breath, urine or other
12 bodily substance for the purpose of determining alcohol concentration or drug
13 content if the person is arrested for any offense arising out of acts alleged
14 to have been committed in violation of this chapter or section 4-244,
15 paragraph 33 while the person was driving or in actual physical control of a
16 motor vehicle while under the influence of intoxicating liquor or drugs. The
17 test or tests chosen by the law enforcement agency shall be administered at
18 the direction of a law enforcement officer having reasonable grounds to
19 believe that the person was driving or in actual physical control of a motor
20 vehicle in this state either:

21 1. While under the influence of intoxicating liquor or drugs.

22 2. If the person is under twenty-one years of age, with spirituous
23 liquor in the person's body.

24 B. After an arrest a violator shall be requested to submit to and
25 successfully complete any test or tests prescribed by subsection A of this
26 section, and if the violator refuses the violator shall be informed that the
27 violator's license or permit to drive will be suspended or denied for twelve
28 months, or for two years for a second or subsequent refusal within a period
29 of sixty months, unless the violator expressly agrees to submit to and
30 successfully completes the test or tests. A failure to expressly agree to
31 the test or successfully complete the test is deemed a refusal. The violator
32 shall also be informed that ~~if the test results show a blood or breath~~
33 ~~alcohol concentration of 0.08 or more, or if the results show a blood or~~
34 ~~breath alcohol concentration of 0.04 or more and the violator was driving or~~
35 ~~in actual physical control of a commercial motor vehicle,~~ the violator's
36 license or permit to drive will be suspended or denied for not less than
37 ninety consecutive days IF THE TEST RESULTS SHOW A BLOOD OR BREATH ALCOHOL
38 CONCENTRATION AS FOLLOWS:

39 1. 0.08 OR MORE.

40 2. 0.04 OR MORE IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL
41 CONTROL OF A COMMERCIAL MOTOR VEHICLE.

42 3. 0.05 OR MORE IF WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS
43 CONVICTED OF A VIOLATION OF SECTION 28-1383 OR AN ACT IN ANOTHER JURISDICTION
44 THAT IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1383.

1 C. A person who is dead, unconscious or otherwise in a condition
2 rendering the person incapable of refusal is deemed not to have withdrawn the
3 consent provided by subsection A of this section and the test or tests may be
4 administered, subject to section 4-244, paragraph 33 or section 28-1381,
5 28-1382 or 28-1383.

6 D. If a person under arrest refuses to submit to the test designated
7 by the law enforcement agency as provided in subsection A of this section:

8 1. The test shall not be given, except as provided in section 28-1388,
9 subsection E or pursuant to a search warrant.

10 2. The law enforcement officer directing the administration of the
11 test shall:

12 (a) File a certified report of the refusal with the department.

13 (b) On behalf of the department, serve an order of suspension on the
14 person that is effective fifteen days after the date the order is served.

15 (c) Require the immediate surrender of any license or permit to drive
16 that is issued by this state and that is in the possession or control of the
17 person.

18 (d) If the license or permit is not surrendered, state the reason why
19 it is not surrendered.

20 (e) If a valid license or permit is surrendered, issue a temporary
21 driving permit that is valid for fifteen days.

22 (f) Forward the certified report of refusal, a copy of the completed
23 notice of suspension, a copy of any completed temporary permit and any driver
24 license or permit taken into possession under this section to the department
25 within five days after the issuance of the notice of suspension.

26 E. The certified report is subject to the penalty for perjury as
27 prescribed by section 28-1561 and shall state all of the following:

28 1. The officer's reasonable grounds to believe that the arrested
29 person was driving or in actual physical control of a motor vehicle in this
30 state either:

31 (a) While under the influence of intoxicating liquor or drugs.

32 (b) If the person is under twenty-one years of age, with spirituous
33 liquor in the person's body.

34 2. The manner in which the person refused to submit to the test or
35 tests.

36 3. That the person was advised of the consequences of refusal.

37 F. On receipt of the certified report of refusal and a copy of the
38 order of suspension and on the effective date stated on the order, the
39 department shall enter the order of suspension on its records unless a
40 written request for a hearing as provided in this section has been filed by
41 the accused person. If the department receives only the certified report of
42 refusal, the department shall notify the person named in the report in
43 writing sent by mail that:

1 1. Fifteen days after the date of issuance of the notice the
2 department will suspend the person's license or permit, driving privilege or
3 nonresident driving privilege.

4 2. The department will provide an opportunity for a hearing if the
5 person requests a hearing in writing and the request is received by the
6 department within fifteen days after the notice is sent.

7 G. The order of suspension issued by a law enforcement officer or the
8 department under this section shall notify the person that:

9 1. The person may submit a written request for a hearing.

10 2. The request for a hearing must be received by the department within
11 fifteen days after the date of the notice or the order of suspension will
12 become final.

13 3. The affected person's license or permit to drive or right to apply
14 for a license or permit or any nonresident operating privilege will be
15 suspended for twelve months from that date or for two years from that date
16 for a second or subsequent refusal within a period of sixty months.

17 H. The order for suspension shall:

18 1. Be accompanied by printed forms that are ready to mail to the
19 department and that may be filled out and signed by the person to indicate
20 the person's desire for a hearing.

21 2. Advise the person that unless the person has surrendered any driver
22 license or permit issued by this state the person's hearing request will not
23 be accepted, except that the person may certify pursuant to section 28-3170
24 that the license or permit is lost or destroyed.

25 I. On the receipt of a request for a hearing, the department shall set
26 the hearing within thirty days in the county in which the person named in the
27 report resides unless the law enforcement agency filing the certified report
28 of refusal pursuant to subsection D of this section requests at the time of
29 its filing that the hearing be held in the county where the refusal occurred.

30 J. A timely request for a hearing stays the suspension until a hearing
31 is held, except that the department shall not return any surrendered license
32 or permit to the person but may issue temporary permits to drive that expire
33 no later than when the department has made its final decision. If the person
34 is a resident without a license or permit or has an expired license or
35 permit, the department may allow the person to apply for a license or permit.
36 If the department determines the person is otherwise entitled to the license
37 or permit, the department shall issue and retain a license or permit subject
38 to this section.

39 K. Hearings requested under this section shall be conducted in the
40 same manner and under the same conditions as provided in section
41 28-3306. For the purposes of this section, the scope of the hearing shall
42 include only the issues of whether:

1 1. A law enforcement officer had reasonable grounds to believe that
2 the person was driving or was in actual physical control of a motor vehicle
3 in this state either:

4 (a) While under the influence of intoxicating liquor or drugs.

5 (b) If the person is under twenty-one years of age, with spirituous
6 liquor in the person's body.

7 2. The person was placed under arrest.

8 3. The person refused to submit to the test.

9 4. The person was informed of the consequences of refusal.

10 L. If the department determines at the hearing to suspend the affected
11 person's privilege to operate a motor vehicle, the suspension provided in
12 this section is effective fifteen days after giving written notice of the
13 suspension, except that the department may issue or extend a temporary
14 license that expires on the effective date of the suspension. If the person
15 is a resident without a license or permit or has an expired license or permit
16 to operate a motor vehicle in this state, the department shall deny to the
17 person the issuance of a license or permit for a period of twelve months
18 after the order of suspension becomes effective or for a period of two years
19 after the order of suspension becomes effective for a second or subsequent
20 refusal within a period of sixty months.

21 M. If the suspension order is sustained after the hearing, a motion
22 for rehearing is not required. Within thirty days after a suspension order
23 is sustained, the affected person may file a petition in the superior court
24 to review the final order of suspension or denial by the department in the
25 same manner provided in section 28-3317. The court shall hear the review of
26 the final order of suspension or denial on an expedited basis.

27 N. If the suspension or determination that there should be a denial of
28 issuance is not sustained, the ruling is not admissible in and has no effect
29 on any administrative, civil or criminal court proceeding.

30 O. If it has been determined under the procedures of this section that
31 a nonresident's privilege to operate a motor vehicle in this state has been
32 suspended, the department shall give information in writing of the action
33 taken to the motor vehicle administrator of the state of the person's
34 residence and of any state in which the person has a license.

35 P. After completing not less than ninety consecutive days of the
36 period of suspension required by this section, a person whose driving
37 privilege is suspended pursuant to this section may apply to the department
38 for a special ignition interlock restricted driver license pursuant to
39 section 28-1401. Unless the certified ignition interlock period is extended
40 by the department pursuant to section 28-1402, a person who is issued a
41 special ignition interlock restricted driver license as provided in this
42 subsection shall maintain a functioning certified ignition interlock device
43 in compliance with **THIS** chapter ~~4 of this title~~ during the remaining period
44 of the suspension prescribed by this section. This subsection does not apply
45 to a person whose driving privilege is suspended for a second or subsequent

1 refusal within a period of sixty months or a person who within a period of
2 sixty months has been convicted of a second or subsequent violation of
3 article 3 of this chapter or section 4-244, paragraph 33 or an act in another
4 jurisdiction that if committed in this state would be a violation of article
5 3 of this chapter or section 4-244, paragraph 33.

6 Sec. 3. Section 28-1381, Arizona Revised Statutes, is amended to read:

7 28-1381. Driving or actual physical control while under the
8 influence; trial by jury; presumptions; admissible
9 evidence; sentencing; classification

10 A. It is unlawful for a person to drive or be in actual physical
11 control of a vehicle in this state under any of the following circumstances:

12 1. While under the influence of intoxicating liquor, any drug, a vapor
13 releasing substance containing a toxic substance or any combination of
14 liquor, drugs or vapor releasing substances if the person is impaired to the
15 slightest degree.

16 2. If the person has an alcohol concentration of 0.08 or more within
17 two hours of driving or being in actual physical control of the vehicle and
18 the alcohol concentration results from alcohol consumed either before or
19 while driving or being in actual physical control of the vehicle.

20 3. While there is any drug defined in section 13-3401 or its
21 metabolite in the person's body.

22 4. If the vehicle is a commercial motor vehicle that requires a person
23 to obtain a commercial driver license as defined in section 28-3001 and the
24 person has an alcohol concentration of 0.04 or more.

25 5. IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF 0.05 OR MORE WITHIN
26 TWO HOURS OF DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE AND
27 THE ALCOHOL CONCENTRATION RESULTS FROM ALCOHOL CONSUMED EITHER BEFORE OR
28 WHILE DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE AND WITHIN
29 THE PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION
30 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE
31 WOULD BE A VIOLATION OF SECTION 28-1383.

32 B. It is not a defense to a charge of a violation of subsection A,
33 paragraph 1 of this section that the person is or has been entitled to use
34 the drug under the laws of this state.

35 C. A person who is convicted of a violation of this section is guilty
36 of a class 1 misdemeanor.

37 D. A person using a drug prescribed by a medical practitioner licensed
38 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
39 subsection A, paragraph 3 of this section.

40 E. In any prosecution for a violation of this section, the state shall
41 allege, for the purpose of classification and sentencing pursuant to this
42 section, all prior convictions of violating this section, section 28-1382 or
43 section 28-1383 occurring within the past thirty-six months, unless there is
44 an insufficient legal or factual basis to do so.

1 F. At the arraignment, the court shall inform the defendant that the
2 defendant may request a trial by jury and that the request, if made, shall be
3 granted.

4 G. In a trial, action or proceeding for a violation of this section or
5 section 28-1383 other than a trial, action or proceeding involving driving or
6 being in actual physical control of a commercial vehicle, the defendant's
7 alcohol concentration within two hours of the time of driving or being in
8 actual physical control as shown by analysis of the defendant's blood, breath
9 or other bodily substance gives rise to the following presumptions:

10 1. If there was at that time 0.05 or less alcohol concentration in the
11 defendant's blood, breath or other bodily substance, it may be presumed that
12 the defendant was not under the influence of intoxicating liquor.

13 2. If there was at that time in excess of 0.05 but less than 0.08
14 alcohol concentration in the defendant's blood, breath or other bodily
15 substance, that fact shall not give rise to a presumption that the defendant
16 was or was not under the influence of intoxicating liquor, but that fact may
17 be considered with other competent evidence in determining the guilt or
18 innocence of the defendant.

19 3. If there was at that time 0.08 or more alcohol concentration in the
20 defendant's blood, breath or other bodily substance, it may be presumed that
21 the defendant was under the influence of intoxicating liquor.

22 H. Subsection G of this section does not limit the introduction of any
23 other competent evidence bearing on the question of whether or not the
24 defendant was under the influence of intoxicating liquor.

25 I. A person who is convicted of a violation of this section:

26 1. Shall be sentenced to serve not less than ten consecutive days in
27 jail and is not eligible for probation or suspension of execution of sentence
28 unless the entire sentence is served.

29 2. Shall pay a fine of not less than two hundred fifty dollars.

30 3. May be ordered by a court to perform community restitution.

31 4. Shall pay an additional assessment of five hundred dollars to be
32 deposited by the state treasurer in the prison construction and operations
33 fund established by section 41-1651. This assessment is not subject to any
34 surcharge. If the conviction occurred in the superior court or a justice
35 court, the court shall transmit the assessed monies to the county treasurer.
36 If the conviction occurred in a municipal court, the court shall transmit the
37 assessed monies to the city treasurer. The city or county treasurer shall
38 transmit the monies received to the state treasurer.

39 5. Shall pay an additional assessment of five hundred dollars to be
40 deposited by the state treasurer in the state general fund. This assessment
41 is not subject to any surcharge. If the conviction occurred in the superior
42 court or a justice court, the court shall transmit the assessed monies to the
43 county treasurer. If the conviction occurred in a municipal court, the court
44 shall transmit the assessed monies to the city treasurer. The city or county
45 treasurer shall transmit the monies received to the state treasurer.

1 J. Notwithstanding subsection I, paragraph 1 of this section, at the
2 time of sentencing the judge may suspend all but twenty-four consecutive
3 hours of the sentence if the person completes a court ordered alcohol or
4 other drug screening, education or treatment program. If the person fails to
5 complete the court ordered alcohol or other drug screening, education or
6 treatment program and has not been placed on probation, the court shall issue
7 an order to show cause to the defendant as to why the remaining jail sentence
8 should not be served.

9 K. If within a period of sixty months a person is convicted of a
10 second violation of this section or is convicted of a violation of this
11 section and has previously been convicted of a violation of section 28-1382
12 or 28-1383 or an act in another jurisdiction that if committed in this state
13 would be a violation of this section or section 28-1382 or 28-1383, the
14 person:

15 1. Shall be sentenced to serve not less than ninety days in jail,
16 thirty days of which shall be served consecutively, and is not eligible for
17 probation or suspension of execution of sentence unless the entire sentence
18 has been served.

19 2. Shall pay a fine of not less than five hundred dollars.

20 3. May be ordered by a court to perform community restitution.

21 4. Shall have the person's driving privilege revoked for one
22 year. The court shall report the conviction to the department. On receipt
23 of the report, the department shall revoke the person's driving privilege and
24 shall require the person to equip any motor vehicle the person operates with
25 a certified ignition interlock device pursuant to section 28-3319. In
26 addition, the court may order the person to equip any motor vehicle the
27 person operates with a certified ignition interlock device for more than
28 twelve months beginning on the date of reinstatement of the person's driving
29 privilege following a suspension or revocation or on the date of the
30 department's receipt of the report of conviction, whichever occurs
31 later. The person who operates a motor vehicle with a certified ignition
32 interlock device under this paragraph shall comply with article 5 of this
33 chapter.

34 5. Shall pay an additional assessment of one thousand two hundred
35 fifty dollars to be deposited by the state treasurer in the prison
36 construction and operations fund established by section 41-1651. This
37 assessment is not subject to any surcharge. If the conviction occurred in
38 the superior court or a justice court, the court shall transmit the assessed
39 monies to the county treasurer. If the conviction occurred in a municipal
40 court, the court shall transmit the assessed monies to the city
41 treasurer. The city or county treasurer shall transmit the monies received
42 to the state treasurer.

43 6. Shall pay an additional assessment of one thousand two hundred
44 fifty dollars to be deposited by the state treasurer in the state general
45 fund. This assessment is not subject to any surcharge. If the conviction

1 occurred in the superior court or a justice court, the court shall transmit
2 the assessed monies to the county treasurer. If the conviction occurred in a
3 municipal court, the court shall transmit the assessed monies to the city
4 treasurer. The city or county treasurer shall transmit the monies received
5 to the state treasurer.

6 L. Notwithstanding subsection K, paragraph 1 of this section, at the
7 time of sentencing, the judge may suspend all but thirty days of the sentence
8 if the person completes a court ordered alcohol or other drug screening,
9 education or treatment program. If the person fails to complete the court
10 ordered alcohol or other drug screening, education or treatment program and
11 has not been placed on probation, the court shall issue an order to show
12 cause as to why the remaining jail sentence should not be served.

13 M. In applying the sixty month provision of subsection K of this
14 section, the dates of the commission of the offense shall be the determining
15 factor, irrespective of the sequence in which the offenses were committed.

16 N. A second violation for which a conviction occurs as provided in
17 this section shall not include a conviction for an offense arising out of the
18 same series of acts.

19 Sec. 4. Section 28-1383, Arizona Revised Statutes, as amended by Laws
20 2005, chapter 307, section 6, is amended to read:

21 28-1383. Aggravated driving or actual physical control while
22 under the influence; violation; classification;
23 definition

24 A. A person is guilty of aggravated driving or actual physical control
25 while under the influence of intoxicating liquor or drugs if the person does
26 any of the following:

27 1. Commits a violation of section 28-1381, section 28-1382 or this
28 section while the person's driver license or privilege to drive is suspended,
29 canceled, revoked or refused or while a restriction is placed on the person's
30 driver license or privilege to drive as a result of violating section 28-1381
31 or 28-1382 or under section 28-1385.

32 2. ~~Within a period of sixty months~~ Commits a third or subsequent
33 violation of section 28-1381, section 28-1382 or this section or is convicted
34 of a violation of section 28-1381, section 28-1382 or this section and has
35 previously been convicted of any combination of convictions of section
36 28-1381, section 28-1382 or this section or acts in another jurisdiction that
37 if committed in this state would be a violation of section 28-1381, section
38 28-1382 or this section.

39 3. While a person under fifteen years of age is in the vehicle,
40 commits a violation of either:

41 (a) Section 28-1381.

42 (b) Section 28-1382.

43 B. ~~The dates of the commission of the offenses are the determining~~
44 ~~factor in applying the sixty month provision provided in subsection A,~~
45 ~~paragraph 2 of this section regardless of the sequence in which the offenses~~

1 ~~were committed.~~ For the purposes of this section, a third or subsequent
2 violation for which a conviction occurs does not include a conviction for an
3 offense arising out of the same series of acts.

4 C. The notice to a person of the suspension, cancellation, revocation
5 or refusal of a driver license or privilege to drive is effective as provided
6 in section 28-3318 or pursuant to the laws of the state issuing the license.

7 D. A person is not eligible for probation, pardon, commutation or
8 suspension of sentence or release on any other basis until the person has
9 served not less than four months in prison if the person is convicted under
10 either of the following:

11 1. Subsection A, paragraph 1 of this section.

12 2. Subsection A, paragraph 2 of this section and ~~within a sixty month~~
13 ~~period~~ has been convicted of two prior violations of section 28-1381, section
14 28-1382 or this section, or any combination of those sections, or acts in
15 another jurisdiction that if committed in this state would be a violation of
16 section 28-1381, section 28-1382 or this section.

17 E. A person who is convicted under subsection A, paragraph 2 of this
18 section and who ~~within a sixty month period~~ has been convicted of three or
19 more prior violations of section 28-1381, section 28-1382 or this section, or
20 any combination of those sections, or acts in another jurisdiction that if
21 committed in this state would be a violation of section 28-1381, section
22 28-1382 or this section is not eligible for probation, pardon, commutation or
23 suspension of sentence or release on any other basis until the person has
24 served not less than eight months in prison.

25 F. ~~In addition to any other penalty provided by law,~~ A person who is
26 convicted under subsection A, paragraph 3, subdivision (a) of this section
27 shall ~~be sentenced to SERVE~~ at least the minimum ~~sentence TERM OF~~
28 ~~INCARCERATION~~ required pursuant to section 28-1381. ~~, except that if a person~~
29 ~~has been convicted of at least two prior violations of section 28-1381,~~
30 ~~section 28-1382 or this section, or any combination of those sections, or~~
31 ~~convicted of at least two prior acts in another jurisdiction that if~~
32 ~~committed in this state would be violations of section 28-1381, section~~
33 ~~28-1382 or this section, or any combination of those sections, within a sixty~~
34 ~~month period, the person shall be sentenced to serve at least the minimum~~
35 ~~sentence required pursuant to this section.~~

36 G. ~~In addition to any other penalty provided by law,~~ A person who is
37 convicted under subsection A, paragraph 3, subdivision (b) of this section
38 shall ~~be sentenced to SERVE~~ at least the minimum ~~sentence TERM OF~~
39 ~~INCARCERATION~~ required pursuant to section 28-1382. ~~, except that if a person~~
40 ~~has been convicted of at least two prior violations of section 28-1381,~~
41 ~~section 28-1382 or this section, or any combination of those sections, or~~
42 ~~convicted of at least two prior acts in another jurisdiction that if~~
43 ~~committed in this state would be a violation of section 28-1381, section~~
44 ~~28-1382 or this section, or any combination of those sections, within a sixty~~

~~month period, the person shall be sentenced to serve at least the minimum sentence required pursuant to this section.~~

H. A person who is convicted of a violation of this section shall attend and complete alcohol or other drug screening, education or treatment from an approved facility. If the person fails to comply with this subsection and is placed on probation, in addition to the provisions of section 13-901 the court may order that the person be incarcerated as a term of probation as follows:

1. For a person sentenced pursuant to subsection D of this section, for an individual period of not more than four months and a total period of not more than one year.

2. For a person sentenced pursuant to subsection E of this section, for an individual period of not more than eight months and a total period of not more than two years.

I. The time that a person spends in custody pursuant to subsection H of this section shall not be counted towards the sentence imposed if the person's probation is revoked and the person is sentenced to prison after revocation of probation.

J. **ON A CONVICTION FOR A VIOLATION OF THIS SECTION,** the court:

1. Shall report the conviction to the department. On receipt of the report, the department shall revoke the driving privilege of the person. The department shall not issue the person a new driver license within three years of the date of the conviction and, for a conviction of a violation of subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this section, shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the date of the department's receipt of the report of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

2. In addition to any other penalty prescribed by law, shall order the person to pay an additional assessment of two hundred fifty dollars. If the conviction occurred in the superior court or a justice court, the court shall transmit the monies received pursuant to this paragraph to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the monies received pursuant to this paragraph to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the driving under the influence abatement fund established by section 28-1304. Any fine imposed for a violation of this section and any

1 assessments, restitution and incarceration costs shall be paid before the
2 assessment prescribed in this paragraph.

3 3. Shall order the person to pay a fine of not less than seven hundred
4 fifty dollars.

5 4. In addition to any other penalty prescribed by law, shall order the
6 person to pay an additional assessment of one thousand five hundred dollars
7 to be deposited by the state treasurer in the prison construction and
8 operations fund established by section 41-1651. This assessment is not
9 subject to any surcharge. If the conviction occurred in the superior court
10 or a justice court, the court shall transmit the assessed monies to the
11 county treasurer. If the conviction occurred in a municipal court, the court
12 shall transmit the assessed monies to the city treasurer. The city or county
13 treasurer shall transmit the monies received to the state treasurer.

14 5. In addition to any other penalty prescribed by law, shall order the
15 person to pay an additional assessment of one thousand five hundred dollars
16 to be deposited by the state treasurer in the state general fund. This
17 assessment is not subject to any surcharge. If the conviction occurred in
18 the superior court or a justice court, the court shall transmit the assessed
19 monies to the county treasurer. If the conviction occurred in a municipal
20 court, the court shall transmit the assessed monies to the city treasurer.
21 The city or county treasurer shall transmit the monies received to the state
22 treasurer.

23 K. AFTER COMPLETING THE PERIOD OF SUSPENSION REQUIRED BY SECTION
24 28-1385, A PERSON WHOSE DRIVING PRIVILEGE IS REVOKED FOR A VIOLATION OF
25 SUBSECTION A, PARAGRAPH 3 OF THIS SECTION MAY APPLY TO THE DEPARTMENT FOR A
26 SPECIAL IGNITION INTERLOCK RESTRICTED DRIVER LICENSE PURSUANT TO SECTION
27 28-1401.

28 ~~K.~~ L. Aggravated driving or actual physical control while under the
29 influence of intoxicating liquor or drugs committed under:

30 1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

31 2. Subsection A, paragraph 3 of this section is a class 6 felony.

32 ~~L.~~ M. For the purposes of this section, "suspension, cancellation,
33 revocation or refusal" means any suspension, cancellation, revocation or
34 refusal.

35 Sec. 5. Repeal

36 Section 28-1383, Arizona Revised Statutes, as amended by Laws 2005,
37 chapter 312, section 4, is repealed.

38 Sec. 6. Section 28-1385, Arizona Revised Statutes, is amended to read:

39 28-1385. Administrative license suspension for driving under
40 the influence; report; hearing; summary review

41 A. A law enforcement officer shall forward to the department a
42 certified report as prescribed in subsection B of this section, subject to
43 the penalty for perjury prescribed by section 28-1561, if both of the
44 following occur:

1 1. The officer arrests a person for a violation of section 4-244,
2 paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

3 2. The person submits to a blood or breath alcohol test permitted by
4 section 28-1321, the results of which indicate either:

5 (a) 0.08 or more alcohol concentration in the person's blood or
6 breath.

7 (b) 0.04 or more alcohol concentration in the person's blood or breath
8 if the person was driving or in actual physical control of a commercial motor
9 vehicle.

10 (c) 0.05 OR MORE ALCOHOL CONCENTRATION IN THE PERSON'S BLOOD OR BREATH
11 IF WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION
12 OF SECTION 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN
13 THIS STATE WOULD BE A VIOLATION OF SECTION 28-1383.

14 B. The officer shall make the certified report required by subsection
15 A of this section on forms supplied or approved by the department. The
16 report shall state information that is relevant to the enforcement action,
17 including:

18 1. Information that adequately identifies the arrested person.

19 2. A statement of the officer's grounds for belief that the person was
20 driving or in actual physical control of a motor vehicle in violation of
21 section 4-244, paragraph 33, section 28-1381 or section 28-1382.

22 3. A statement that the person was arrested for a violation of section
23 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

24 4. A report of the results of the chemical test that was administered.

25 C. The officer shall also serve an order of suspension on the person
26 on behalf of the department. The order of suspension:

27 1. Is effective fifteen days after the date it is served.

28 2. Shall require the immediate surrender of any license or permit to
29 drive that is issued by this state and that is in the possession or control
30 of the person.

31 3. Shall contain information concerning the right to a summary review
32 and hearing, including information concerning the hearing as required by
33 section 28-1321, subsections G and H.

34 4. Shall be accompanied by printed forms ready to mail to the
35 department that the person may fill out and sign to indicate the person's
36 desire for a hearing.

37 5. Shall be entered on the department's records on receipt of the
38 report by the officer and a copy of the order of suspension.

39 D. If the license or permit is not surrendered pursuant to subsection
40 C of this section, the officer shall state the reason for the
41 nonsurrender. If a valid license or permit is surrendered, the officer shall
42 issue a temporary driving permit that is valid for fifteen days. The officer
43 shall forward a copy of the completed order of suspension, a copy of any
44 completed temporary permit and any driver license or permit taken into

1 possession under this section to the department within five days after the
2 issuance of the order of suspension along with the report.

3 E. The department shall suspend the affected person's license or
4 permit to drive or right to apply for a license or permit or any nonresident
5 operating privilege for not less than ninety consecutive days from that date.

6 F. Notwithstanding subsections A through E of this section, the
7 department shall suspend the driving privileges of the person described in
8 subsection A of this section for not less than thirty consecutive days and
9 shall restrict the driving privileges of the person for not less than sixty
10 consecutive additional days to travel between the person's place of
11 employment and residence and during specified periods of time while at
12 employment, to travel between the person's place of residence and the
13 person's secondary or postsecondary school, according to the person's
14 employment or educational schedule, to travel between the person's place of
15 residence and the office of the person's probation officer for scheduled
16 appointments or to travel between the person's place of residence and a
17 treatment facility for scheduled appointments if the person:

18 1. Did not cause serious physical injury as defined in section 13-105
19 to another person during the course of conduct out of which the current
20 action arose.

21 2. Has not been convicted of a violation of section 28-1381, 28-1382
22 or 28-1383 within sixty months of the date of commission of the acts out of
23 which the current action arose. The dates of commission of the acts are the
24 determining factor in applying the sixty month provision.

25 3. Has not had the person's privilege to drive suspended pursuant to
26 this section or section 28-1321 within sixty months of the date of commission
27 of the acts out of which the current action arose.

28 G. If the department receives only the report of the results of the
29 blood or breath alcohol test and the results indicate 0.08 or more alcohol
30 concentration in the person's blood or breath, ~~or~~ show a blood or breath
31 alcohol concentration of 0.04 or more and the person was driving or in actual
32 physical control of a commercial motor vehicle, **INDICATE 0.05 OR MORE ALCOHOL**
33 **CONCENTRATION IN THE PERSON'S BLOOD OR BREATH IF WITHIN THE PREVIOUS SIXTY**
34 **MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION 28-1383 OR AN ACT**
35 **IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE WOULD BE A VIOLATION**
36 **OF SECTION 28-1383**, the department shall notify the person named in the
37 report in writing sent by mail that fifteen days after the date of issuance
38 of the notice the department will suspend the person's license or permit,
39 driving privilege or nonresident driving privilege. The notice shall also
40 state that the department will provide an opportunity for a hearing and
41 administrative review if the person requests a hearing or review in writing
42 and the request is received by the department within fifteen days after the
43 notice is sent.

44 H. A timely request for a hearing stays the suspension until a hearing
45 is held, except that the department shall not return any surrendered license

1 or permit to the person but may issue temporary permits to drive that expire
2 no later than when the department has made its final decision. If the person
3 is a resident without a license or permit or has an expired license or
4 permit, the department may allow the person to apply for a license or
5 permit. If the department determines the person is otherwise entitled to the
6 license or permit, the department shall issue, but retain, the license or
7 permit, subject to this section. All hearings requested under this section
8 shall be conducted in the same manner and under the same conditions as
9 provided in section 28-3306.

10 I. For the purposes of this section, the scope of the hearing shall
11 include only the following issues:

12 1. Whether the officer had reasonable grounds to believe the person
13 was driving or was in actual physical control of a motor vehicle while under
14 the influence of intoxicating liquor.

15 2. Whether the person was placed under arrest for a violation of
16 section 4-244, paragraph 33, section 28-1381, section 28-1382 or section
17 28-1383.

18 3. Whether a test was taken, the results of which indicated the
19 alcohol concentration in the person's blood or breath at the time the test
20 was administered of either:

21 (a) 0.08 or more.

22 (b) 0.04 or more if the person was driving or in actual physical
23 control of a commercial motor vehicle.

24 (c) 0.05 OR MORE IF WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS
25 CONVICTED OF A VIOLATION OF SECTION 28-1383 OR AN ACT IN ANOTHER JURISDICTION
26 THAT IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1383.

27 4. Whether the testing method used was valid and reliable.

28 5. Whether the test results were accurately evaluated.

29 J. The results of the blood or breath alcohol test shall be admitted
30 on establishing the requirements in section 28-1323 or 28-1326.

31 K. If the department determines at the hearing to suspend the affected
32 person's privilege to operate a motor vehicle, the suspension provided in
33 this section is effective fifteen days after giving written notice of the
34 suspension, except that the department may issue or extend a temporary
35 license that expires on the effective date of the suspension. If the person
36 is a resident without a license or permit or has an expired license or permit
37 to operate a motor vehicle in this state, the department shall deny the
38 issuance of a license or permit to the person for not less than ninety
39 consecutive days.

40 L. A person may apply for a summary review of an order issued pursuant
41 to this section instead of a hearing at any time before the effective date of
42 the order. The person shall submit the application in writing to any
43 department driver license examining office together with any written
44 explanation as to why the department should not suspend the driving
45 privilege. The agent of the department receiving the notice shall issue to

1 the person an additional driving permit that expires twenty days from the
2 date the request is received. The department shall review all reports
3 submitted by the officer and any written explanation submitted by the person
4 and shall determine if the order of suspension should be sustained or
5 cancelled. The department shall not hold a hearing, and the review is not
6 subject to title 41, chapter 6. The department shall notify the person of
7 its decision before the temporary driving permit expires.

8 M. If the suspension or determination that there should be a denial of
9 issuance is not sustained after a hearing or review, the ruling is not
10 admissible in and does not have any effect on any civil or criminal court
11 proceeding.

12 N. If it has been determined under the procedures of this section that
13 a nonresident's privilege to operate a motor vehicle in this state has been
14 suspended, the department shall give information in writing of the action
15 taken to the motor vehicle administrator of the state of the person's
16 residence and of any state in which the person has a license.